
(1975) 01 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Writ Petition No. 510 of 1971

Dr. Umrao Mal Mathur

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 16-01-1975

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1975) RLW 552 : (1975) 8 WLN 383

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Gupta, J.—The petitioner was working on the post of Professor of Skin and Veneral Diseases, at the S.M. Medical College, Jodhpur wbsn he attained the age of superannuation on July 7, 1969 However, he was retain d in the service of the State Government and was granted an extension on the said post upto February 28, 1971. He was re employed on the aforesaid post for a period of one year by the order of the State Government dated July 8, 1971 with effect from March 1, 1971 While the petitioner was working on the post of Professor, in pursuant of the aforesaid order of his re-employment an order passed by the State Government dated September 10, 1971 was served upon him by which the earlier order dated July 3, 1271 was cancelled with immediate effect. The petitioner appears to have been relived of his post in pursuance of the aforesaid order dated September 10, 1971 on September 14, 1971, The petitioner filed the present writ petition challenging the aforesaid order of September 10. 1971 cancelling his order of re employment However, during the pindency of the writ petition, the State Government, by a subsequent order dated October 6, 1975 superseded the earlier order dated September 10, 1971 and at the same time, terminated the re-employment of the petitioner with effect from September 10, 1971 The order dated October 6, 1971 reads as under:

GOVERNMENT OF RATASTHAN

MEDICAL & PUBLIC HEALTH DEPARTMENT.

No. F. (11) MPH/71/Gr. I. Dated Jaipur the 6th Oct, 1971 In supersession to this department order of even No. dated 10.9.71, the re-employment of Dr. Umrao Mal Mathur as Professor of Skin & V.D. at Medical College, Jodhpur is hereby terminated w.e.f. 10.9.71. He shall be paid one month's pay in lieu of one month notice.

By Order

Sd/-

(Gopesh Bhatt)

Dy. Secretary to Government.

2. The learned Counsel for the petitioner submits that after having retired from service he was re-employed for a fixed term of one year by the orders of the State Government dated July 8, 1971 with effect from March 1, 1971 and, therefore he had a right to hold the post of Professor of Skin and Venereal Diseases upto February 29, 1971 and that the order of termination of his services with effect from September 10, 1971 amounted to his removal from service by way or punishment and was in contravention of the provisions of Article 311 of the Constitution.

3. The reply of the learned Additional Government Advocate is that the petitioner was re-employed by the order dated July 8, 1971 and that the services of such a person must be regarded as temporary and not for a fixed term in accordance with the audit instructions inserted below Rule 58 of the Rajasthan Service Rules. The learned Additional Government Advocate relies upon the latter order dated October 6, 1971 and urges that the State Government could terminate the services of the petitioner by giving him one month's notice or one month's emoluments in lieu of notice, in accordance with the provisions of Rule 23 A of the Rajasthan Service Rules.

4. I have considered the rival contentions. In the first place, Rule 23-A of the Rajasthan Service Rules (hereinafter called "the Rules") has no application to the present case, inasmuch as it does not apply to the termination of the service of those temporary Govt. servants who have been appointed for a fixed term. In the case of such employees, their services automatically stand terminated on the expiry of the fixed term for which they are appointed and there is no necessity of giving them any notice under Rule 23-A. In the second place, the notice contemplated by Rule 23-A would become effective only when it is served on the Government servant concerned and it would ordinarily be of a duration of one month, unless otherwise agreed to by the Government and the employee concerned. Thirdly, even under the provisions of Rule 23-A(1), the services of a temporary Government servant may be terminated forthwith, subject to the condition that a sum equivalent to the amount of his emoluments for the period of notice is paid to him along with order of such termination. The order of

October 6, 1971, by which the petitioner's services are alleged to have been terminated under Rule 23-A of the Rules, neither gave the petitioner one month's notice from the date of service of the aforesaid notice, nor one month's pay in lieu of the notice was paid to the petitioner along with the aforesaid order dated October 6, 1971. Moreover, the said order stated that the petitioner's re-employment stood terminated with effect from September 10, 1971. It is difficult to understand as to how by a notice issued on October 6, 1971 under the provisions of Rule 23-A of the Rules, the petitioner could stand terminated retrospectively with effect from September 10, 1971, Thus, the order dated October 6, 1971 was both insufficient, and invalid even the under provisions of Rule 23-A, to terminate the re-employment of the petitioner. Moreover the Audit instructions relied upon by the respondents are not at all relevant.

5. As I have already observed above, the provisions of Rule 23-A cannot be made applicable to the services of a temporary Government servant, who was appointed on a fixed term According to the contract the petitioner was to continue service in until the expiry of the period of one year beginning from March 1, 1971. In this connection, I may refer to the observations of S.R. Das the then Chief Justice of the Supreme Court, in *Parshotam Lal Dhingra Vs. Union of India (UOI)*,

Again where a parson is appointed to a temporary post for a fixed term of say five years his service cannot, in the absence of a contract of a service rule permitting its pre-mature termination be terminated before the expiry of that period unless he has been guilty of Semmes conduct, negligence inefficiency or other disqualifications and appropriate proceeding are taken under the rules read with Article 311(2), The premature termination of the service of a servant so appointed will prima facie be a dismissal or removal from service by way of punishment and so within the purview of Article 311(2).

6. In the present case, the petitioner was re-employed by the order dated July 6, 1971 specifically for a fixed term of one year with effect from March 1, 1971 and the premature Germination of his service, before the expiry of the aforesaid term of one year, would prima facie amount to his dismiss or removal from service, although neither any misconduct, negligence, inefficiency or other disqualification has been alleged, nor any disciplinary proceedings under the Rajasthan Civil Service (Classification, Control & Appeal) Rules 1958, have been taken against the petitioner. The post to which the petitioner was appointed, namely that of Professor of Skin and Venereal Diseases Service is included in the Rajasthan Medical (Collegiate Branch) Service Appointments to the posts in the aforesaid Service are governed by the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 (hereinafter referred to as "the Service Rules") Rule; 25 of the Service Rules, which provides for appointments to senior and selection post, including that of a Professor, authorises the State Government to make appointment by re-employment of a retired member of the Service subject to the condition that such re-employment shall no; exceed a period of the two years without the

concurrence of Public Service Commission. Rule 30 of the Service Rules, which provides for temporary or officiating appointments, also authorizes the State Government to make temporary appointments for a period of one year. Thus, there is no provision in the Service Rules, which permitted a premature termination of the employment of the petitioner before the expiry of the aforesaid fixed term of one year. In this view of the matter, the petitioner had a right to hold the post of Professor, on the basis of the appointment order relating to his re-employment upto February 29, 1972, In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, it has been further observed by their Lordships of the Supreme Court:

Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank to get the emoluments and other benefits attached thereto.

In view of aforesaid discussion, the premature termination of the petitioner's services was entirely illegal and unjustified as he was entitled to continue in service upto February 29, 1972. The order passed by the State Government dated October 6, 1971 terminating the service of the petitioner with effect from September 10, 1971 is, therefore, invalid and is hereby quashed. The earlier order dated September 10, 1971 has already been withdrawn by the State Government. However, the petitioner could not have continued in service beyond February 29, 1972, but he is entitled to get all emolument and other benefits attached to his re-employment on the post of Professor of Skin and Venereal Diseases upto the aforesaid date.

7. The writ petition is consequently allowed as indicated above. In the circumstances of the case, the parties are left to bear their own costs.